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SUPREME COURT, U.S.

No. 97-2001

In The

Supreme Court of the United States

October Term, 1997

BLANCHE RANDOLPH, as conservator of DEBORAH RANDOLPH,

Petitioner,

vs.

AL CERVANTES, MARY PHILLIPS, individually and in their official capacity as employees of PINE BELT REGIONAL MENTAL HEALTH CENTER, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

The parent company of Respondent Pine Belt Regional Mental Health Center is Regional XII Commission on Mental Health and Retardation and there are no nonwholly owned subsidiaries.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

A. Facts

At the age of 17 years old, the Conservator's ward, Deborah Randolph (hereinafter referred to as "Randolph") was diagnosed as a paranoid schizophrenic. Prior to the incident giving rise to this suit, she had a long and well documented history of psychiatric treatment and had in fact been involuntarily committed to state mental hospitals, including East Mississippi State Hospital and Whitfield, on a number of occasions.

On December 11, 1991, a sanity hearing was conducted in Forrest County Chancery Court and was initiated as a result of Randolph's mother, Blanche Randolph (hereinafter referred to as "Blanche") filing an Affidavit and Application for Involuntary Commitment. The subject hearing was presided over by Special Master Jerry Evans. After considering various reasonable alternatives to involuntary commitment, including outpatient care, day treatment in a hospital, night treatment in a hospital, home health services, custodial placement with an individual, as well as other alternatives, the court found that it was in the best interest of Deborah Randolph after hearing all the testimony, to receive outpatient treatment at Pine Belt Mental Health Center (hereinafter referred to as "Pine Belt"). The court further ordered that the treatment be supervised by Al Cervantes, a staff member of Pine Belt. Subsequent to the aforesaid hearing, Randolph was released on her own recognizance and was not placed in the custody of anyone by Special Master Evans. Randolph was not involuntarily committed to a state mental health facility on December 11, 1991. Contrary to the representations of Petitioner, the December 11, 1991 Forrest County Chancery Court Order related solely to outpatient treatment at Pine Belt and did not require or relate to the living arrangements or housing of Randolph nor did said order place Randolph in the custody of Pine Belt.

Upon being released on her own recognizance, Randolph executed a lease and resided at a Section 8 Apartment at 318 Florence Street. She resided in this apartment alone and her rent was paid by her supplemental security income check. Randolph remained in this apartment until June, 1992 at which time she was evicted for having unauthorized tenants in her apartment unit. As Randolph was homeless, Cervantes assisted Randolph in applying for a residence at Pine Hill Apartments — apartments which were owned by Pine Belt. Randolph signed the application and lease and at the time these documents were executed, she had no court appointed guardian nor conservator, nor had there been any adjudication as to her competency.

No member of the staff of Pine Belt resided in the apartment being rented by Randolph, nor did any member of the staff supervise her activities on a twenty-four hour basis. Randolph was free to come and go as she so desired and could terminate her rental agreement with Pine Belt upon thirty days' written notice. As a condition to approval of her lease application, she agreed to abide by Pine Hill Apartments' rules and to participate in various programs sponsored by Pine Belt.

No officer, agent or employee of the State of Mississippi directed, influenced or in any way controlled Pine Belt's decision as it relates to the execution of the lease between Randolph and Pine Belt. Furthermore, the Pine Belt Mental Health Commissioners named as Respondents herein had no involvement in the execution of the lease for the Pine Hill Apartments and they had no role in the selection of which mental health patients executed leases for the Pine Hill Apartment units.

On August 19, 1992, Randolph found a used syringe in a garbage reciprocal which had been utilized by another Pine Belt client who happened to be an insulin dependent diabetic. Randolph injected her eyes and thereafter contacted Cervantes

to complain of discomfort with her eyes. Cervantes immediately responded to Randolph's Complaint at which time Randolph's eyes appeared irritated but Randolph denied placing anything in her eyes and gave no reason as to why her eyes might be irritated. Cervantes assisted Randolph in washing out her eyes and returned later that day to check on her status. Cervantes further noted that if Randolph was no better by morning, he would transport her to a doctor.

On the morning of August 20th, 1992, Cervantes and Phillips, another staff member of Pine Belt visited Randolph and noted that her eyes still appeared irritated at which time she was taken to Forrest General Hospital emergency room. Upon questioning by the emergency room physician, Randolph confessed to having injected her eyes with insulin. Despite emergency surgery, Randolph lost one eye and only has limited light perception in the second eye.

On August 4, 1995, Blanche, Randolph's mother, acting as conservator, filed the subject lawsuit alleging a violation of Randolph's rights to substantive due process in violation of 42 U.S.C. § 1983 and seeking recovery of actual, compensatory, hedonic, punitive and exemplary damages. No conservator had ever been appointed for Randolph until her mother was appointed on August 4, 1995, the same date that the subject lawsuit was filed.

B. Course of Proceedings and Disposition Below

In addition to the information set forth in the Petition, it should be noted that subsequent to the Fifth Circuit Court of Appeals entering its memorandum opinion and order upholding the District Court's granting of summary judgment, Petitioner herein filed a Petition for Rehearing which was denied on March 16, 1998. Additionally, as no member of the panel nor any

Judge in regular active service of the court requested that the court be polled on the Rehearing En Banc, the Suggestion for Rehearing En Banc was likewise denied.

REASONS FOR DENYING THE WRIT

I.

THE FIFTH CIRCUIT COURT OF APPEALS DID NOT FAIL TO RECOGNIZE A CONSTITUTIONAL DUTY TO PROTECT MENTALLY ILL PERSONS FROM THEMSELVES. INSTEAD, THE COURT'S HOLDING WAS BASED ON THE FACT THAT THE STATE DID NOT CREATE A "SPECIAL OR CUSTODIAL RELATIONSHIP" WITH RANDOLPH SO THAT IT OWED SOME DUTY TO HER UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The Petitioner's reliance upon cases from the First, Second, Seventh and Eighth Circuits in claiming that a constitutional duty existed in the instant case is totally misplaced. All of the cases cited by the Petitioner involved an institutionalized setting or an admission to a mental hospital. *Goodman v. Parwatikar*, 570 F.2d 801, 804 (8th Cir. 1978) (stating that once admitted, a patient, voluntarily or involuntarily has the constitutional right to a safe and human living environment); *Harper v. Cserr*, 544 F.2d 1121 (1st Cir. 1976) (a pre *DeShaney* decision involving an institutionalized mental patient); *K. H., through Murphy v. Morgan*, 914 F.2d 846 (7th Cir. 1990) (state welfare workers are not entitled to qualified immunity for placing a child in the custody of a foster parent that the state knew or suspected to be a child abuser after the child had been removed from the custody of her natural parents); *McCartney v. Barg*, 643 F. Supp. 1181 (N.D. Ohio 1986) (voluntary admittee at state mental health

center stated a cause of action when she was denied therapy in violation of a court order); *Society for Goodwill to Retarded Children v. Cuomo*, 737 F.2d 1239 (2nd Cir. 1984) (residents of state operated school for the mentally retarded, voluntarily or involuntarily are entitled to safe conditions and freedom from undue restraint.)

Clearly, the above referenced cases are in line with *Youngberg v. Romeo*, 457 U.S. 307, 324, 102 S. Ct. 2452, 2462-63, 73 L. Ed. 2d 28 (1982) wherein this court held that a mental patient involuntarily committed to a state hospital enjoys

> constitutionally protected interests and conditions of reasonable care and safety, reasonably, non-restrictive confinement conditions, and such training as may be required by these interests.

The case at bar is clearly distinguishable from the aforesaid cases as we are not dealing with the institutionalized nor are we dealing with an admission to a mental hospital and/or state institution. The Forrest County Chancery Court Order of December 11, 1991 did not place Randolph in the custody of Pine Belt and it did not mandate her living arrangements nor did it require her to submit to any particular regimen. Accordingly, it cannot be said that Pine Belt in attempting to assist Randolph so that she could live in the least restricted environment without being institutionalized and the action of the Forrest County Chancery Court in ordering Randolph to undergo outpatient treatment is sufficient to give rise to a special relationship as defined by *DeShaney* and its progeny. *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) and *Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995).

II.

THERE IS NO CONFLICT BETWEEN THE CIRCUITS AS TO THE STATE CREATED DANGER THEORY.

The Fifth Circuit Court of Appeals has considered the possible viability of the state created danger theory as a mechanism for establishing a constitutional claim pursuant to 42 U.S.C. § 1983 and in fact, the Fifth Circuit has recognized the elements or factors which a Plaintiff must demonstrate to support recovery under the state-created danger theory and has recognized that the standard of liability under the state-created danger theory is that of deliberate indifference. *Lefall v. Dallas Indep. Sch. Dist.*, 28 F.3d 521, 531 (5th Cir. 1994) and *Johnson v. Dallas Indep. Sch. Dist.*, 38 F.3d 198 (5th Cir. 1994), *cert. denied*, 514 U.S. 1017, 115 S. Ct. 1361, 131 L. Ed. 2d 218 (1995).

The Fifth Circuit simply has not been presented with the appropriate factual background to support a finding that the state actors created a danger which deprived an individual of his or her Fourteenth Amendment right to substantive due process. Obviously, the United States District Court for the Southern District of Mississippi and subsequently, the Fifth Circuit did not believe that the case *sub judice* presented the right set of facts which, if believed, would trigger the application of the state-created danger theory.

Specifically, the Fifth Circuit found that

> the key to the state-created danger cases . . . lies in the state actors' culpable knowledge and conduct in affirmatively placing an individual in a position of danger, effectively striping a person of her ability to

> defend herself, or cutting off potential sources of private aid.

Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 201 (5th Cir. 1994). As Randolph voluntarily resided at Pine Belt Apartments and had the right to come and go from the premises as she so desired and could terminate her rental agreement on 30 days written notice, it cannot be said that Randolph was stripped of her ability to defend herself.

Moreover, the underlying facts clearly did not demonstrate that the Defendant acted with deliberate indifference to Randolph's constitutional rights. Pine Belt, through its various staff members, were assisting Randolph so that she could live as independently as possible and not be a burden to her family. The underlying facts clearly establish that upon the initial complaint by Randolph concerning her eyes, Pine Belt's staff took immediate action to check on Randolph; to assist her in washing out her eyes; and continued to check on her and ultimately transported her to the emergency room. The Defendants simply did not act with utter disregard for the Plaintiff's constitutional rights.

Additionally, the First Circuit has refused to extend the State-Created Danger Doctrine in a case involving a mentally ill person who had voluntarily availed himself of a state service. *Monahan v. Dorchester Counseling Center, Inc.*, 961 F.2d 987 (1st Cir. 1992). Like the Plaintiff in *Monahan*, Randolph voluntarily availed herself of the apartment at Pine Belt. She executed a lease and availed herself of a service at a time when she was homeless and had no place to go. Moreover, to claim that Pine Belt's staff rendered Randolph more vulnerable to a danger by allowing her to obtain access to the instrumentalities that she utilized to inflict harm upon herself would convert most state tort claims into constitutional violations. Petitioner's ward

lost her eye sight due to her own self inflicted injury because of her vulnerability stemming from her own mental condition and said injury occurred in an apartment which she voluntarily leased and availed herself.

The cases from the various Circuits which have recognized the State-Created Danger Doctrine have all involved coercive exercise of government power which either forcefully restrained a party from protecting himself from harm or restrained others from protecting him. *See, e.g., Ross v. United States*, 910 F.2d 1422 (7th Cir. 1990) (county official prevented city official from rescuing drowning boy); *White v. Rockford*, 592 F.2d 381 (7th Cir. 1979) (police officer left small children unattended in a car on the side of the freeway after arresting their uncle); *Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989), *cert. denied*, 498 U.S. 938, 111 S. Ct. 341, 112 L. Ed. 2d 305 (1990) (police officer arrested drunk driver leaving female passenger behind who was raped). None of the cases involved mental health care professionals and the negligent or deliberately indifferent provision of services to a party voluntarily seeking those services. *Monahan v. Dorchester Counseling Ctr., Inc.*, 961 F.2d at 993.

III.

THE FACTS OF THE SUBJECT CASE DO NOT WARRANT AN EXPANSION OF *DESHANEY v. WINNEBAGO COUNTY DEPT. OF SOC. SERVS.* AND *YOUNGBERG v. ROMEO* AS THE STATE DID NOT CREATE A "SPECIAL RELATIONSHIP" WITH RANDOLPH.

In examining the claims before this court, it is important to remember that "Section 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties

of care arising out of tort law." *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450 (5th Cir. 1994) (en banc) (quoting *Baker v. McCollan*, 443 U.S. 137, 146, 99 S. Ct. 2689, 2695, 61 L. Ed. 2d 433, 443 (1979), *cert. denied*, __ U.S. __, 115 S. Ct. 70, 130 L. Ed. 2d 25 (1994). The Respondent would respectfully submit that Randolph's remedies, if any, lie in the arena of tort, not constitutional law as the alleged misconduct violated no constitutional duty.

In *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189, 200, 109 S. Ct. 998, 1006, 103 L. Ed. 2d 249 (1989), this Court held that it was the state's affirmative restraint on an individual's liberty, "through incarceration, institutionalization, or other similar restraint of personal liberty" not its failure to act, which creates the necessary "special relationship" to invoke the protection of the due process clause. In further discussing the state's due to protect, this court found that said duty "arises not because of the state's knowledge of the individual situation, but from the limitation the state imposed on his freedom to act on his on behalf." *Id.* 489 U.S. at 200, 109 S. Ct. at 1005-06.

While the Chancery Court's order operated to restrain Randolph's liberty to a certain extent, the requirement that Randolph undergo outpatient treatment was not so extensive as to render her unable to care for herself. It was conclusively established in the proceedings below that Randolph was not placed in the custody of anyone following the sanity hearing on December 11, 1991 but was instead released on her own recognizance. Furthermore, subsequent to the aforesaid hearing, Randolph executed a lease and resided at a Section 8 apartment. She resided in the apartment alone and remained there until June, 1992, at which time she was evicted for having unauthorized tenants in her apartment unit.

The Chancery Court order of December 11, 1991, related solely to outpatient treatment at Pine Belt and did not require or relate to the living arrangements or housing of Randolph nor did said order place Randolph in the custody of Pine Belt. Accordingly, it cannot be said that the court order in and of itself established the necessary "special relationship" as required by *DeShaney*. Additionally, Randolph's execution of the application and lease in order to reside at Pine Hill Apartments was not involuntary in the sense that the state forced her to execute the lease and by doing so placed her involuntarily in the state's custody.

Petitioner erroneously advances the argument that a custodial relationship was established in that Randolph was essentially dependent upon various staff members of Pine Belt to provide her with transportation, to assist with her financial affairs and that she was forced to live at Pine Belt as she had no other choice. Unfortunately, Randolph's lack of choice and helplessness was not the result of the state's coercive power as the State did not restrain her liberty rendering her unable to care for herself. Instead, Randolph's lack of choice and/or alternative was the result of her own mental illness. The fact that Randolph's mental condition may have made her functionally dependent on various staff members of Pine Belt is not sufficient to establish a constitutional violation. This distinction was discussed by the United States Court of Appeals for the First Circuit in *Monahan v. Dorchester Counseling Center, Inc.*, 961 F.2d 987 (1st Cir. 1992). Monahan's attorney, like the Petitioner's attorney argued that the rationale applicable to involuntarily committed patients might possibly apply to some voluntarily committed mental patients

> depending on [their] degree of disability, the availability of other resources and of parents, spouses, friends and guardians . . . [voluntary patients] may or may not be compelled de facto to endure the conditions at a state facility.

However, the First Circuit had the following to say as to Monahan's helplessness and its impact upon the alleged constitutional violation, to-wit:

> *To be sure, Monahan's mental condition may have made him functionally dependent on his caretaker, but no more so than is true of many other noncommitted ill persons in a hospital or outpatient setting. His helplessness was not attributable to the State's having taken him into custody involuntarily.* *DeShaney* teaches that the Constitution is implicated only when the State takes an "affirmative act" which "restrain[s] the individual's freedom to act on his own behalf". 109 S. Ct. at 1005. Here, where it was Monahan's own mental condition alone that impinged upon his freedom to leave, it was not the State that deprived him of that freedom. The State not having restrained Monahan "against his will" the Constitution did not impose upon it any responsibility for his safety and well being. *DeShaney*, 109 S. Ct. at 1005-06. (emphasis added)

As in *Monahan*, it was not the State of Mississippi that rendered Randolph helpless, it was her own mental condition and since the State did not utilize its sovereign power to render her unable to care for herself, the underlying facts do not take on the character of an affirmative deprivation of life, liberty or property without due process of law. Petitioner's ward lost her eye sight due to her own self inflicted injury because of Randolph's vulnerability stemming from her own mental condition. The State of Mississippi did not force Randolph, against her will, to reside at Pine Hill Apartments.

The only restraint on Randolph's liberty which could fairly be attributable to the state was the Chancery Court's order which required outpatient treatment. Of utmost significance is the fact

that the subject court order did not require or relate to the living arrangements of Randolph. Petitioner erroneously represents to this court that the December 11, 1991 order somehow related to her subsequent rental of a Pine Belt Apartment. This is simply not so and in fact, subsequent to the subject hearing, Randolph was released on her on recognizance. Thus, it cannot be said that Randolph was involuntarily confined against her will when she resided at Pine Hill Apartments.

The injury giving rise to this suit occurred in Plaintiff's residence, not as a result of the outpatient treatment she was receiving from Pine Belt pursuant to court order. With reference to her apartment at Pine Belt, no member of the staff of Pine Belt resided in the apartment being rented by Randolph, nor did any member of the staff supervise her activities on a 24 hour basis. Randolph was free to come and go as she so desired and could terminate her rental agreement with Pine Belt upon 30 days' written notice.

The only conditions of her rental agreement with Pine Belt is that she agreed to participate in Pine Belt's case management program; to participate in psychiatric appointments; to take medications as prescribed; to attend day treatment which involved daily participation and structured activities; to participate in Pine Belt's money management program; and other treatment services as recommended by the staff of Pine Belt. By executing the subject lease, Randolph voluntarily agreed to abide by the rules and regulations as established by Pine Belt.

However, the fact that Randolph agreed to abide by certain conditions such as participation in treatment programs and to attend day treatment activities in and of itself is not sufficient to establish the necessary "special relationship." In *Walton v. Alexander*, 44 F.3d 1297 (5th Cir. 1995), the court found that a deaf student who resided on campus at the Mississippi School

for the Deaf and who was under the 24 hour custody of the school and subject to the school's strict rules as to what he could and could not do was insufficient to establish the "special relationship" since he was voluntarily residing at the state facility under its custodial rules. Like *Walton*, Randolph was voluntarily residing at the Pine Hill Apartment and agreed to abide by their rules and regulations. Although her freedom may have been somewhat curtailed, it was she who subjected herself to the rules of the Pine Hill Apartments Complex and at all times, she had the option and right to terminate her lease. As stated in *Walton*, a 'special relationship' does not arise solely because the state exercises custodial control over an individual when a person voluntarily resides in a state facility under it custodial rules. The facts in the instant case simply do not establish that Randolph's status as a tenant at Pine Hill Apartments somehow placed her in the category of persons who are entitled to claim a constitutional duty of protection from harm, especially when the harm is occasioned by her own hands.

The factual scenario presented by the instant case does not mandate an expansion of the Fourteenth Amendment. The Petitioner's ward lost her eyesight due to her own self inflicted injury because of her vulnerability stemming from her own mental condition and said injury occurred in an apartment which she voluntarily leased and availed herself. The state did not involuntarily commit her nor did they force her to execute a lease at Pine Hill Apartments. Because Randolph leased the apartment voluntarily, she was not taken into custody and held against her will by the affirmative exercise of state power.

IV.

THE FIFTH CIRCUIT COURT OF APPEALS HOLDING THAT DEBORAH RANDOLPH VOLUNTARILY ENTERED INTO A LEASE AGREEMENT DOES NOT CONFLICT WITH THE ELEVENTH CIRCUIT COURT OF APPEALS' OPINION IN *BURCH v. APALACHEE COMMUNITY MENTAL HEALTH SERVICE.*

In the present case, Randolph seeks relief based upon the substantive component of the due process clause. The case law upon which Petitioner relies involves violations of the procedural component of the due process clause. *See Zinermon v. Burch*, 494 U.S. 113, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990), (the failure to follow placement procedures prior to a mental hospital admission was sufficient to state a claim under 42 U.S.C. § 1983) and *Burch v. Apalachee Community Mental Health Serv.*, 840 F.2d 797 (11th Cir. 1998) (the allegations of the complaint stated a valid procedural due process claim in that Burch was admitted to the mental health facility at a time when he was heavily medicated, disoriented and psychotic and was committed beyond 48 hours without a court ordered evaluation necessary for involuntarily placement).

The case at bar has nothing whatsoever to do with an admission to a mental facility and whether Randolph was accorded procedural due process. After being evicted and essentially being left homeless, Randolph was assisted in applying for a residence at Pine Hill Apartments — apartments which are owned by Pine Belt. Randolph executed the application and lease for the Pine Hill Apartment and at the time the lease was executed, she had no court appointed guardian nor conservator, nor had there been any adjudication as to her competency. Petitioner argues, without basis, that Randolph's

mental illness is such that she was mentally incompetent to make decisions concerning her health and safety and thus, her application and execution of a lease at Pine Hill Apartments was *de facto* involuntary and as such, these facts would distinguish her from those persons that are voluntarily within the care and custody of a state agency. The Respondents would respectfully submit that the Petitioner's analysis is flawed.

First of all, Petitioner is attempting to confuse the issues of an admission or commitment to a treatment facility with an adjudication of incompetency. Mississippi Code Annotated, § 41-21-101 provides as follows:

> No admission or commitment to a treatment facility under sections 41-21-61 through 41-21-107 or any finding of need for treatment, or any authorization of continued treatment under said sections (a) is an adjudication of legal incompetency, or (b) deprives the person of his right to exercise his civil rights, including, but not limited to, civil service status, the right to vote, rights relating to the granting renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, *or the right to enter into contractual relationships and to manage his property*; nor does such admission, hospitalization, finding or authorization of continued hospitalization create any presumption that such person is incompetent.

The aforesaid statute clearly establishes that if someone is committed or admitted to a treatment facility or there is a finding of a need for treatment such as the case at bar, there is no presumption created that such person is incompetent. Subsequent to the December 11, 1991 sanity hearing, Randolph still had all of her legal rights, including the right to enter into

contractual relationships and to manage her property. This is evident by the fact that Special Master Jerry Evans released her on her own recognizance and she executed a lease to reside at the Florence Street Apartment before ever residing at Pine Hill. Moreover, at the time Randolph signed the application and lease for the Pine Hill Apartment, she had no court appointed guardian nor conservator, nor had there been any adjudication as to her competency.

In fact, no conservator was ever appointed for Randolph until the date this suit was filed. Thus, Petitioner's argument as it relates to Randolph's execution of a lease with Pine Hill being involuntary simply is not supported by the facts in the record nor by the law of the State of Mississippi.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

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